IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 333 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANSARA ASHOKKUMAR DAMODARDAS

Versus

SHIHOR NAGARPALIKA

Appearance:

1. Criminal Revision Application No. 333 of 2004

MR ASHISH D OZA for Petitioner No. 1-4

MR BK OZA for Respondent No. 1

MR.K.P.Raval, A.P.P. for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 26/04/2005

ORAL JUDGEMENT

1. This Criminal Revision Application is directed

against the judgment and order passed by the learned Additional Sessions Judge, Bhavnagar, (Fast Track Court no.II) in Misc.Criminal Application no.133 of 2003 setting aside the order dated 5-7-2003 passed by the Sub Divisional Magistrate, Bhavnagar, in case no.133/1/02.

2. Briefly stated, the facts leading to the present Criminal Revision Application are that the applicants herein alongwith some other persons moved an application under Section 133 of the Criminal Procedure Code on the ground that the present respondent no.1-Nagarpallika had put public dust-bin near the house of one Bhanumatiben and other accused persons which was numbered as Case no.133/2/99. It was alleged therein that foul smell was emitting and creating nuisance in the surrounding area. It was further the case that the learned Sub Divisional Magistrate by order dated 1-10-2001 in case no.133/2/99 directed the respondent no.1-Nagarpallika to remove the said dust-bin. Thereupon, the respondent no.1 preferred Criminal Revision Application no.111/2001 before the District Sessions Judge, Bhavnagar. The learned District Sessions Judge after hearing the parties and on the basis of the material placed before him rejected the said application by order dated 27-2-2002. Thereafter, on 3-8-2002, the respondent no.1 with the aid of Police Escort put up a new public dust-bin 3 ft. away from the house of the applicant no.1 which has increased the nuisance. The applicants, therefore filed application under Section 141 of the Criminal Procedure Code for execution of the order passed by the learned Sub Division Magistrate in case no.133/2/99 whereby the dust-bin was ordered to be removed so as to avoid nuisance. That application bearing case no.133/1/2 was allowed by the learned Sub Divisional Magistrate by order dated 5-7-2003 and the respondent no.1 was directed to obey the said order. The respondent no.1-Nagarpallika being aggrieved by this order preferred Criminal Revision Application no.133/2003 before the learned Additional Sessions Judge, Bhavnagar, (Fast Track Court no.II) who by his order dated 26-2-2004 while allowing the application of the respondent no.1, set aside the order dt.5-7-2003 passed by the learned Sub Divisional Magistrate, Bhavnagar, in case no.133/1/2, giving rise to the present Criminal Revision Application.

3. Learned Advocate Mr. Ashish D.Oza for the applicant has submitted that the earlier order passed by the Sub Divisional Magistrate directing removal of the dust-bin so as to avoid nuisance has not been implemented. According to him, the respondent no.1-Nagarpallika is keeping the dust-bin uncleaned as a

result of which the garbage collected is emitting foul smell which is badly affecting the health of the public in surrounding areas and since the dust-bin is placed very near to the house of the applicant no.1 it is a source of nuisance to the applicants and the nearby residents.

4. As against this, Mr. B.K.Oza submitted that in order to keep the area clean, it is the duty of the respondent no.1-Nagarpallika to put dust-bins and that the dust-bin is placed at a distance of 15 ft. away from the house of the applicant no.1. According to him, cleaning operations of the dust-bin are being carried out regularly and no nuisance is caused to the applicants or other persons of the area. Under the circumstances, it is submitted by the learned Counsel that the order passed by the learned Sub Divisional Magistrate, Bhavnagar, is illegal and invalid and the order of the learned Additional Sessions Judge setting aside the order passed by the learned Sub Divisional Magistrate is quite legal and proper warranting no interference at the hands of this Court. The learned Counsel finally urged that the Criminal Revision Application be dismissed.

5. Having carefully perused the entire record of the case, I find that there is a clear-cut statement in the affidavit in reply filed on behalf of the respondent no.1 to the effect that the dust-bin in question had been shifted near the toilet and placed at a distance of 15 ft. away from the house of the applicant, and as such, it cannot be said that it is placed in the private property of any person. With regard to placing of dust-bins, it is the duty of the Nagarpallika as a part of the cleanliness drive to provide dust-bins at required spots so that the thickly populated areas similar to that of the locality concerned in the present revision can be kept clean and free from spread of diseases, and therefore, the learned Additional Sessions Judge after appreciating the materials placed before him had arrived at a just and proper conclusion in passing the order under challenge. The learned Counsel for the respondent no.1 has assured the Court that the Chief Officer of the Nagarpallika shall file an undertaking in the same lines as the one filed before the trial Court to the effect that the dust-bins provided in the area in question shall be cleansed regularly and necessary medicine shall also be sprayed regularly etc. Considering all these aspects, I am of the opinion that the dust-bins have been provided for the welfare of the public at large to prevent ill-health. In the event garbage is thrown out in the open it would spread diseases and the Nagarpallika has to

take care of such situations and therefore, it will not be in the fitness of things to order removal of the dustbins.

6. In view of what is discussed hereinabove, this Criminal Revision Application which lacks merits, fails and is dismissed, subject however, to the condition that the respondent no.1 shall file an undertaking as stated hereinabove within a ten days from today. Rule is discharged.

(M.D.Shah,J.)

stanley-mds.